IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.K.DENESAN

TUESDAY, THE 24TH APRIL 2007 / 4TH VAISAKHA 1929

WP(C).No. 28566 of 2006(A)

PETITIONER:

N.RAJAKUMAR, LD CLERK,
DISTRICT SUPPLY OFFICE,
CIVIL STATION, KAKKANAD,
RESIDING AT THOTTUNKAL PARAMBU,
KUTHIATHODU P.O., ALAPPUZHA.

BY ADV. SMT.P.V.ASHA

RESPONDENTS:

1. STATE OF KERALA,
REP. BY SECRETARY TO GOVERNMENT,
LAW DEPARTMENT, GOVT. SECRETARIAT,
THIRUVANANTHAPURAM.

2. KERALA PUBLIC SERVICE COMMISSION,
REP. BY ITS SECRETARY,
PATTOM, THIRUVANANTHAPURAM-4.

3. SHINCY P.B., LEGAL ASSISTANT GRADE II,
LAW DEPARTMENT, GOVT. SECRETARIAT,
THIRUVANANTHAPURAM.

4. JYOTHI JOY T.K., LEGAL ASSISTANT GR.II,
LAW DEPARTMENT, GOVT. SECRETARIAT,
THIRUVANANTHAPURAM.

***5. E.V. RAPHAEL,RANK NO. 16,**
EDATHIPARAMBIL HOUSE,
CHERUVALLOOR P.O.,
KORATTY VIA, TRICHUR DIST.

6. SONI GOPINATH, RANK NO. 18,
KRISHNA NIVAS, PRAKULAM,
PRAKULAM P.O., KOLLAM DIST.

**7. VIJAYADEVI, S/O. P.GOPAKUMAR,
AGED 34 YRS, RANK NO. 17, GAYATHRI,
TC 11/2130, KANAKA NAGAR,
THIRUVANANTHAPURAM.**

***ADDL. R5 TO R7 ARE IMPLEADED AS PER ORDER DATED 7/11/2006 IN IA NO. 15427/2006.**

****8. T.R.SARADA, SAI VIHAR,
HOUSE NO. 101, M.P. APPAN NAGAR,
VAZHUTHACAD, THIRUVANANTHAPURAM.**

**9. V.K.SANJU, VAISHNAVABHAVAN,
CHENCHERRY ROAD, NALANCHIRA,
THIRUVANANTHAPURAM.**

**10. K.DHANALAKSHMY, TC 26/1721,
KANNANKARA HOUSE, NEAR STATUE JUNCTION,
THIRUVANANTHAPURAM.**

**11. T.GEETHA, CHENNAT HOUSE,
PULLUT P.O., THRISSUR DIST.**

**12. V.PUSHPA GIREESAN,
PRANAVAM, TC 10/309(1), ARUVIODE,
MANNAMTHALA P.O., THIRUVANANTHAPURAM.**

**13. A.A.KADEEJABI, AMBALATH HOUSE,
MANNUTHY P.O., THRISSUR.**

**14, T.A.BENZEER, THOPPIL VADAKKETHIL HOUSE,
S.R.M.MARKET P.O., KARUNAGAPPALLY.**

****ADDL.R8 TO R14 ARE IMPLEADED AS PER ORDER DATED 07/11/2006 IN IA NO. 15503/2006.**

**BY ADVS. SRI.K.JAJU BABU - R5 TO R7
SRI.N.D.PREMACHANDRAN
SRI.KRB.KAIMAL - R8 TO R14
GOVERNMENT PLEADER SRI. P.NANDAKUMAR
SRI.P.C.SASIDHARAN, SC, KPSC**

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 19/03/2007 ALONG WITH WPC NOS. 30359/2006 AND 30284/2006, THE COURT ON 24/04/2007 DELIVERED THE FOLLOWING:

WP(C) NO: 28566/2006

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1. COPY OF THE RELEVANT PORTION OF THE RANKED LIST DT. 10/12/03 OF CANDIDATES UNDER ITEM (IV) FOR THE POST OF LEGAL ASSISTANTS GRADE-II.

EXT.P2. COPY OF THE RANKED LIST DT. 25/08/2003 OF CANDIDATES UNDER ITEM (III) FOR THE POST OF LEGAL ASSISTANTS GRADE II.

EXT.P3. COPY OF THE RELEVANT PORTION OF THE SPECIAL RULES FOR APPOINTMENT TO THE POST OF LEGAL ASSISTANT GRADE II IN THE KERALA SECRETARIAT SUBORDINATE SERVICE.

EXT.P4. COPY OF THE JUDGMENT DT. 16/6/06 IN WPC NO. 14064/04.

EXT.P5. COPY OF THE ORDER DT. 12/07/06 OF R1 ISSUED TO THE RESPONDENT 3 AND 4.

EXT.P6. COPY OF THE REPRESENTATION DT. 2/09/06 OF PETITIONER TO R1.

EXT.P7. COPY OF THE LETTER DT. 7/11/2006 OF R1.

EXT.P8. COPY OF THE GO RT NO. 1046/06/LAW DT. 14/11/06.

EXT.P9. COPY OF THE GO P NO. 195/95/FIN DT. 09/03/95.

RESPONDENT'S EXHIBITS

EXT.R1A. COPY OF THE DETAILED STATEMENT SHOWING THE APPOINTMENT ON ROTATION CYCLE.

EXT.R5A. COPY OF THE RANK LIST FOR THE POST OF LEGAL ASSISTANT GRADE II PUBLISHED ON 20/11/03 BY THE KERALA PSC.

True copy

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K.K.DENESAN, J.

WP(C)Nos.28566, 30284 &
30359 OF 2006

Dated this the 24th April, 2007.

JUDGMENT

In view of the common facts and similar questions of law, these three writ petitions are disposed of by this common judgment.

2. Facts not in dispute may be first noticed. In the Special Rules for the Kerala Secretariat Subordinate Service issued under G.O(P)208/PD dated 5.7.1967 (hereinafter referred to as the 'Rules') the post of Legal Assistant Gr.II in the Law Department is category No:7. The following are the methods of appointment to the above post:-

> i) Direct recruitment through Public Service Commission.
>
> ii) Appointment from among Tamil Translators, Kannada Translators in Law Department.
>
> iii) Appointment or promotion from any category in Kerala Secretariat Subordinate Service.
>
> iv) Transfer from any other Department under the Government or in the service of the High Court."

The rotation to be followed while filling up the vacancies has also been specified in the rules. The rotation shall be as follows:-

"1st vacancy - By the methods specified in item (i) or (ii) of the method of appointment.

2nd vacancy - By the method specified in item (iii) of the methods of appointment.

3rd vacancy - By the methods specified in item (i) or (ii) of the method of appointment.

4th vacancy - By the method specified in item (iii) of the methods of appointment.

5th vacancy - By the methods specified in item (i) or (ii) of the method of appointment.

6th vacancy - By the method specified in item (iii) of the method of appointment.

7th vacancy - By the methods specified in item (i) or (ii) of the method of appointment.

8th vacancy - By the methods specified in item (iv) of the method of appointment.

9th vacancy - By the methods specified in item (i) or (ii) of the method of appointment.

10th vacancy - By the method specified in item (iv) of the method of appointment."

3. In the absence of qualified persons for appointment by the methods specified in item 3 above, such vacancies shall be filled up by the method specified in item (iv) of the method of appointment and vice versa. If qualified persons are not available for appointment by the method specified in items (iii) and (iv) of the method of appointment, such vacancies shall be filled up by direct recruitment.

4. Briefly stated, 50% of the posts shall be filled up by direct recruitment as also by appointment or promotion of Tamil Translators and Kannada Translators {items (i) and (ii)] and the other 50% is to be filled up by the methods specified in items (iii) and (iv) in the ratio of 3:2.

5. For the purpose of filling up the vacancies in the post of Legal Assistant Gr.II by following the methods prescribed by the Rules, three separate rank lists were prepared and published. The State Service Commission published the rank list of candidates for direct recruitment under items (i) and (ii) on 20.11.2003. The Law Department published the rank list of eligible candidates under item (iii) on 25.8.2003 and another rank list for candidates under item (iv) on 10.12.2003. The above rank lists are not live with effect from 19.11.2006, 24.8.2006 and 9.12.2006 respectively. The petitioner in W.P(C) 28566/2006 finds a place in the rank list which was in force from 10.12.2003 to 9.12.2006 and the petitioners in W.P(C) 30284/2006 and 30359/2006 find their names included in the rank list of the Public Service Commission which was in force from 25.8.2003 to 24.8.2006.

6. The petitioner in W.P(C) 28566/2006 has approached this Court with the complaint that the first respondent has

failed to appoint eligible candidates from the rank list for appointment of candidates under item (iv) and that vacancies due to be filled up by appointing candidates from that rank list are sought to be filled up by direct recruits in excess of the quota reserved for them. The petitioners in the other two writ petitions, while maintaining the stand that no excess direct recruitment as alleged by the petitioner in W.P(C) 28566/2006 has been made, would put forward the contention that vacancies due to be filled up by candidates belonging to the open market from the list published by the Public Service Commission are still available and that the first respondent is liable to be compelled to fill up some more vacancies to satisfy the quota as per the rota reserved for them by the rules.

7. I have heard the learned counsel for the petitioners in the above three writ petitions, the learned counsel for the party respondents including those who got themselves impleaded as additional respondents and the Senior Govt. Pleader who appeared for the Government in the Law Department.

8. The common case put forward by the parties is that appointments shall be made in accordance with the rules. In the nature of the contentions raised by the parties, it

is not necessary to embark on an interpretation of the rules or the manner in which the rule shall be applied to the facts of these cases. The disputed question essentially is one relating to the cadre strength in the post of Legal Assistant Gr.II (category No:7). It is not disputed that the vacancies will have to be filled up according to the prescribed ratio and that the said ratio has to be worked out with reference to the cadre strength. As found by this Court in the judgment in W.P(C) 14064/2004 (Ext.P4 in W.P(C) 28566/2006) the above proposition has its statutory foundation in Note 3 to Rule 5 of K.S & S.S.R.

9. Initially the parties proceeded on the assumption that the cadre strength of Legal Assistants Gr.II was 26. In fact, the counter affidavit filed on behalf of the first respondent-Government also gave such an impression. Subsequently additional counter affidavit was filed on behalf of the Government stating that the total cadre strength of Legal Assistant Gr.II, Legal Assistant Gr.I and Legal Assistant Senior Grade would come to 71. It was also stated that a ratio of 1:2:1 has to be maintained between the above three categories of posts and by apportioning the number of posts according to the above ratio the cadre strength of Legal Assistant Gr.II, Legal Assistant Gr.I and

Legal Assistant Senior Grade would be 18:36:17 as against the pre-existed cadre strength of 26:30:15. The petitioners have taken strong exception to the re-computation done by the first respondent as disclosed in the additional counter affidavit. The petitioners have built up their case based on the information they had gathered on their own which was found strengthened by the facts and figures furnished by the first respondent in the counter affidavit sworn to, in the first instance. The petitioner in W.P(C) 28566/2006 would contend for the position that the cadre strength of Legal Assistants Gr.II is 26 and going by the counter affidavit filed by the first respondent on 8.2.2007 there were 15 posts of Legal Assistants Gr.II in 1995, which cadre strength was increased to 22 by creating seven more posts in 1996 and 1997 and thereafter increased to 26 by creating four posts of Legal Assistants Gr.II in 2005 and 2006. The above petitioner would state that the physical strength of Legal Assistant Gr.II was only 18 as on the date of expiry of the rank list in which his name finds a place which means that 8 posts were remaining unfilled as on the crucial date. According to that petitioner the above eight vacancies will have to be apportioned as 3 direct recruits/Tamil

Translators and Kannada Translators and the balance 5 for the other 50% from items (iii) and (iv). Since none from item (iii) was available for appointment, (it is common case that rank list for item (iii) had exhausted even before the date of expiry) all the five vacancies shall be filled up by candidates belonging to item (iv). The petitioners in the other two cases would submit that there were 13 persons coming under the Direct Recruitment/Tamil Translators and Kannada Translators quota and the balance 13 posts were occupied by candidates under items (iii) and (iv) and therefore, the contention of the petitioner in W.P (C) 28566/2006 that direct recruits were in excess of the quota is factually incorrect. According to the petitioners in the said two writ petitions, subsequent vacancies have arisen, as admitted by the first respondent, in the category of Legal Assistant Gr.II consequent on orders promoting Legal Assistants Gr.II to the post of Legal Assistant Gr.I and further promotion to the post of Legal Assistant Senior Grade.

10. Noticing the apparent discrepancy in the averments made in the pleadings of the parties as also the counter affidavits filed by the first respondent regarding the cadre strength of Legal Assistant Gr.II and the number of

vacancies worked out on such basis, this Court directed the Secretary to Government, Law Department to swear to an affidavit furnishing the true and correct details pertaining to those facts. Accordingly the Law Secretary has sworn to an affidavit on 8.2.2007. From the above affidavit the following details are available.

11. As per G.O(Rt) No: 97/95/Law dated 24.3.1995 the cadre strength of Legal Assistant was fixed as 60. By applying the ratio of 1:2:1 there would be 15 posts of Legal Assistant Gr.II, 30 posts of Legal Assistant Gr.I and 15 posts of Legal Assistant Senior Grade in the Law Department. While so, 7 posts of Legal Assistant Gr.II were created in the Law Department. Thus the strength of Legal Assistant Gr.II increased from 15 to 22. That was the reason why in the counter affidavit filed on 16.11.2004 in W.P(C)14064/2004 it was stated that the cadre strengrh was 22. Thereafter, two additional posts of Legal Assistant Gr.II in Law (Suits) and two posts of Legal Assistant Gr.II in Law (KLBF) department were created on 3.12.2005 and 7.1.2006 respectively. Therefore a counter affidavit was filed on behalf of the Government on 8.11.2006 stating that the number of posts of Legal Assistants was 26 and that 13 persons were PSC hands and

the other 13 were from other department quota. But subsequently it was found that the total cadre strength of Senior Grade Legal Assistants, Legal Assistants Gr.I and Legal Assistants Gr.II will have to be apportioned in the ratio of 1:2:1 and the total cadre strength of the above three categories being 71, apportionment of the total cadre strength among the above three categories in the prescribed ratio would work out to 18:36:17. The effect of implementing the above 1:2:1 ratio is that the cadre strength of Legal Assistant Gr.I will increase with a corresponding decrease in the number of posts of Legal Assistant Gr.II. Therefore, the cadre strength of Legal Assistant Gr.II had to be re-computed as 18 as against 26 and the cadre strength of Legal Assistant Gr.I had to be re-computed as 36 as against 30, previously existed. The affidavit filed by the Law Secretary shows that the total cadre strength of all the three posts remain the same viz., 71. In the light of the above details, the first respondent would submit that no vacancy remains unfilled either in the quota reserved for direct recruits/Tamil Translators and Kannada Translators or the quota reserved for candidates under items (iii) and (iv) of the method of appointment.

12. The petitioner in W.P(C) 28566/2006 has filed reply affidavit stating that no order or rule had come into existence between the filing of the counter affidavit and the additional counter affidavit or the counter affidavit filed in the case disposed of as per Ext.P4 judgment and that the first respondent has not come forward with true and complete facts.

13. It cannot but be remarked that the facts disclosed in the affidavit sworn to by the Law Secretary on 8.2.2007 could have been and ought to have been stated even without an order from this Court to furnish the correct details. Be that as it may, I am unable to accept the contention of the petitioners that this Court has to proceed on the assumption that the cadre strength of Legal Assistant Gr.II remains 26 and not 18 despite the change in the number of posts consequent on the implementation of the ratio of 1:2:1. The resultant position is that additional vacancies were not available to appoint any more candidates included in the rank lists published by the State Service Commission on 20.11.2003 and the first respondent on 10.12.2003. It is found accordingly. It follows that the writ petitioners are not entitled tot he reliefs prayed for. It is, however, made clear that the first respondent is duty bound

to work out the ratio on the cadre strength and to maintain the same as per the Rules between the candidates coming under items (i) and (ii) on the one hand and those under items (iii) and (iv) on the other, as and when recruitment or appointments are made. Subject to the above observation, the writ petitions are dismissed.

K.K.DENESAN
Judge

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